Supreme Court, U.S.
FILED
AUG 2 1999
OFFICE OF THE CLERK

(2)

No. 98-1948

In The

Supreme Court of the United States

MANUEL ANGULO ALVAREZ, ET AL.,

Petitioners,

v.

JOSE E. APONTE DE LA TORRE, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To United States Court Of Appeals For The First Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION

TO THE HONORABLE COURT:

RESPONDENTS, Municipality of Carolina and its Mayor José E. Aponte de la Torre in his official capacity, very respectfully oppose the petition to review the judgment of the United States Court of Appeals for the First Circuit in this case for the following reasons:

INTRODUCTION

Pursuant to Supreme Court Rule 24(2) for purposes of this Opposition to the Petition for Writ of Certiorari respondents adopt the petitioners' formal requisites for briefs included in Rule 24(1)(a)(b)(d)(e), and (f). We proceed to discuss the deficiencies of petitioners' statement of the case.

ARGUMENT

Respondents do not substantially disagree with petitioners with regards to the statement of facts propounded by the latter, however, respondents wish to clarify some of them, that as construed may mislead this Honorable Court. Other facts which are important in the events that led to the dismissal of the complaint were altogether left out of petitioners' narrative and, once again, it is important that this Honorable Court considers the totality of the facts surrounding this case.

The first thing that petitioners allege to this Honorable Court as a violation of due process is that respondents were allowed to file their Motion for Summary Judgment three days after the deadline previously set by the District Court. Although a numerical analysis will show that there was a three-day delay in filing the Motion, a calendar analysis will reflect that in reality it did not even amount to a day. The last day for filing fell on a Friday and there was simply not enough time to file it before closing time. It was filed the next working day, Monday, March 5, 1998. Respondents did not file an informative motion because at that time it was felt it would be of no consequence what in reality was a few hours delay in the filing of the motion. As a matter of fact, both the District Court and the Court of Appeals dismissed this argument because it was waived by the petitioners themselves by not timely raising it. Furthermore, the alleged three-day delay in filing the motion did not cause the petitioners any prejudice. A trial date had not been set at the time respondent's motion was filed. After the filing, petitioners requested and were granted an extension of time to oppose the motion, which they finally filed around two months later. In conclusion, there was no damage to petitioner's due process protections and the District Court did not abuse its discretion in allowing the filing of the motion.

The second point that needs clarification regards petitioners' request to depose Mayor Aponte. This request was denied by the District Court because the petition for this discovery was made for the very first time at the Pre-Trial Conference. In reality it was a reaction to respondents request to obtain in discovery the

basis for their prima facie case that prompted the request for this deposition. Petitioners' request is clearly distinguishable from respondents' request for the answer to four interrogatories. Petitioner had shown a stubborn attitude by not providing timely and meaningful discovery during the discovery phase of the litigation. This point will be discussed further in another section; suffice it for now to say that the Honorable District Court did not abuse its discretion by denying this belated request.

A third point that needs clarification is petitioners' claim that the District Court abused its discretion by granting respondents' Motion to Dismiss without allowing petitioners the ten days allotted by the rules to file responses. Although it may seem that the District Court acted too quickly and without the benefit of petitioners' response, the truth of the matter is that there was nothing to respond to because this was not a "typical" motion to dismiss under Federal Rule Of Civil Procedure 12. (Although petitioners try to argue that the ruling was under FRCP 12(b)(6), it clearly was not).

In reality it was a request by respondents for the Honorable Court to impose sanctions for failure to comply with a court order. This is why we respectfully submit that there was nothing to respond to, either the court's order to each petitioner to answer four questions had been complied with or not. It should be clear from the record that petitioners blatantly disregarded the court order and as a matter of fact, not even after dismissal (via reconsideration) did petitioners responsively answer the four questions posed by the court. (We very respectfully submit that petitioners never attempted to seriously address these questions, even after knowing that the

previously announced consequence, dismissal, was already a reality).

Before going into the answers provided by Angulo, the only petitioner who attempted to comply with the court order, it is important to note that petitioners were fully forewarned by the Honorable Court of the consequences of non-compliance. This fact is recognized in petitioners' own brief where in the sixth footnote they admit that "in the pretrial conference held on January 20, 1998, the District Court warned the plaintiffs-petitioners, that failure to comply with the response to such interrogatories, will result in the dismissal of the claims and/or sanctions against counsel personally." This candid admission by petitioners, which of course comes right out of the minutes of the Pre-Trial Conference, should cap any argument that the court abused its discretion by dismissing what clearly was a frivolous claim. The same minutes will reflect that during the Pre-Trial Conference petitioners were not able to identify a single position for which they claimed they qualified and that such position was given to another person due to his/her political affiliation. This is precisely why the court's order was so strongly worded. On the eve of trial, petitioners had not propounded enough evidence to have a prima facie case for the jury to consider. The four answers go to this basic evidence needed in this type of case:

1. Each position you claim was available at the Municipality at the time of your lay-off or subsequently became available but was not offered to you.

2. Specify the qualifications required for the position(s) listed in response to question no.

1. Indicate if you met those qualifications and if not specify why not.

3. For each position identified in response to question no.1 state the name of the person appointed to fill the position and his/her political affiliation.

4. List the evidence you have available to establish that political affiliation was a motive for filing the position.

Although petitioners seem to claim that these were oppressive questions, in reality they are the ABC's of a discrimination case of any nature, not only a political one. A brief perusal to the only response timely filed by petitioner Angulo will reveal that the District Court did not abuse its discretion in dismissing the remaining claims. The Court explained that there was no justification for petitioner to lack the crucial evidence that the Court had requested. The court pointed out, in particular, the failure to proffer any evidence to establish discrimination. Not only were Angulo's answers deficient and unresponsive, there was absolute silence with regards to question number four, the most important one of the group. If this Honorable Court were to examine the original documents it will observe that when the other petitioners filed their answer belatedly through a motion for reconsideration, it was an exact copy of the one previously filed by Angulo except that a fourth answer was "typed in" and only stated that the evidence of discrimination would be their own testimony. They never offered what the factual basis for this alleged testimony would be, nor anything else that would sustain their discrimination allegations.

This is the crux of the matter. This is why the non-compliance with the court order left no choice to the District Court but to conclude that there was no reason to proceed to trial when petitioners had demonstrated that even after ample opportunities they lacked the necessary proof to meet the burden of producing sufficient evidence from which the trier of fact could reasonably infer that political affiliation was a substantial or motivating factor behind the contested personnel actions. It was not an abuse of discretion to dismiss the complaint of petitioners that plainly refused to comply with discovery orders that went to the most basic concepts of a discrimination claim.

Petitioners simply never cleared the initial threshold of producing sufficient evidence from which a rational jury can find that political affiliation was a substantial or motivating factor as established in the case law, such as *Rutan v. Republican Party of Illinois*, 497 U.S. 752 (1980) and its progeny, or *Mt. Healthy City School Dist. Board of Ed. v. Doyle*, 429 U.S. 274 (1977), and its progeny.

Angulo's answers not only were insufficient and unresponsive but they were speculative and based on inadmissible hearsay. Furthermore, if we were to accept petitioners' argument with regards to the privatization and relocation of the employees at face value, we would have to conclude that there was no discrimination. As the Honorable Court of Appeals for the First Circuit expressed in its Opinion:

> "Indeed, although the plaintiffs alleged that a majority of the employees at the Department were NPP followers, defendants correctly note that the plaintiffs' own statements belie the accuracy of this statement. The plaintiffs claim –

> and defendants do not dispute – that there were a total of seventy employees in the Department. In the Plaintiffs' motion for reconsideration of the dismissal of their complaint, they listed 29 PDP followers who were relocated to other jobs. Combined with the other six names set forth in additional documentation, at least half of the employees in the Department must have been PDP followers. At the very most, the Plaintiffs can claim that the Department was evenly split between PDP and NPP followers. On this evidence, no rational jury could conclude that the decision to privatize the department was politically motivated. Given that the Plaintiffs failed to meet their initial burden of presenting a prima facie case of discrimination, the court properly entered summary judgment on the privatization claim."

This final, and fatal, disregard of the District Court orders cannot be seen in a void but in the context of the total litigation. Although petitioners downplay these events as not important, they help establish the context of the final decision. The record will reflect that respondents' initial interrogatories, served on February 29, 1996, where deficiently answered by the petitioners on August, 1996. After innumerable meetings among counsel pursuant to District Court local rule 311.11, which requires counsel to meet before bringing discovery discrepancies to the Honorable Court, respondents had to send a thirty-four (34) page letter specifying the deficiencies in the answers on April 18, 1997. This produced no response and respondents had to seek an order from the court on May 5, 1997, which was granted in no uncertain terms.

On June 3, 1997 the court ordered petitioners to supplement the interrogatories served on them with complete and accurate answers. The court noted that the discovery subject of the order had been served one year before and had obtained totally inadequate answers. Further the Court clarified that "the information sought . . . should be readily available to petitioners . . . because they have the burden of proof in this action . . . ". Since June 1997, the Court warned for the first time that "failure to comply with the terms of this Order shall result in the imposition of sanctions including but not limited to the dismissal of the complaint".

The lack of responsive answers, even after such a strong language forced the issue at the Pre-Trial conference that is being brought to this Honorable Supreme Court. This is why in the just perspective, the Honorable Court did not abuse its discretion when dismissing a complaint for lack of answers that are so basic to a discrimination complaint that should have been provided in the first round of discovery on or around March 1996.

CONCLUSION

As can be clearly determined after all the facts are taken into account, the District Court for the District of Puerto Rico did not err, nor abuse its discretion by dismissing the complaint, nor did the Court of Appeals for the First Circuit err in affirming the judgment, therefore the PETITION FOR CERTIORARI should be denied by this Honorable Supreme Court.

Respectfully submitted,

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